

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4845 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GARBADBHAI DECEASED THROUGH HEIRS

Versus

CHHAGANBHAI DABHAIBHAI CHAVDA

Appearance:

MR SD PATEL for Petitioners

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/11/1999

ORAL JUDGEMENT

The petitioners have challenged the order dated 4th July, 1986 of the Gujarat Revenue Tribunal in the Revision Application filed by the petitioners, dismissing the revision application and upholding the orders of the lower authorities in respect of a finding on an issue which was referred under Section 85A of the Bombay Tenancy Act, to the effect that Raijibhai Garbadbhai was

not the tenant of the land in question.

2. A reference was made to the Mamlatdar and ALT, Borsad, under Section 85A of the Bombay Tenancy Act, in respect of the lands of survey No.544, admeasuring 35 gunthas of village Davol and the Mamlatdar was required to decide the issue as to whether the applicant was the tenant of 17 1/2 gunthas of land of the said survey number on its western side. The Mamlatdar and ALT, after hearing the parties, vide his order dated 23.12.1989, gave a finding that the applicant Raijibhai Garbadbhai was not the tenant of these lands. Raijibhai Garbadbhai and other heirs of deceased Garbhadbhai, preferred an appeal being Appeal No. 20/82 against the said finding before the Deputy Collector, Petlad, who, by his order dated 29th June, 1982, dismissed the appeal and confirmed the finding which was against the petitioners. In the revision preferred before the Tribunal against that order, it was contended on behalf of the petitioners that the applicant Raijibhai was the tenant of half of the land belonging to Vallabhbhai and Ambalal, whereas the opponent Chhaganbhai was only a tenant of half the land, which belonged to Shivabhai Jethabhai. It was also argued that there was a hedge in the centre of the land, as seen in the panchnama made by the Civil Court. The Tribunal found that the Mamlatdar had, after a proper enquiry and weighing the evidence, rightly decided that Raijibhai was not a tenant of this land. It is noticed that the Mamlatdar had relied on the basic fact that the lands of survey No.544 were not partitioned into two portions as per the record of right entries and that the lands belonged to one Shivabhai and not to the other two brothers Vallabhbhai and Ambalal, who had deposed that they had leased half of the land to Raijibhai. The Tribunal held that the petitioners' counsel had not been able to show as to how the lower authorities had committed any error or failed to appreciate any important evidence. It was held that there was no entry made in the revenue records even on the basis of an unregistered partition deed and that the factum of partition was not believable. The Tribunal held that both the lower authorities had correctly appreciated the evidence.

It will thus, be seen that there is a concurrent finding of fact of three authorities that the applicant Raijibhai was not the tenant. The learned Counsel appearing for the petitioner contended that the Tribunal had not given any finding on the contention that there was a panchnama drawn, which showed that there was a hedge dividing the two parcels of land. It will be seen

from the order of the appellate authority that this contention was elaborately dealt with and it was held that the hedge which was referred to in the panchnama dated 19.11.1976 was only with a view to make arrangement for watering the field. It was a hedge of hardly five inches broad. The Tribunal noted the contentions including this one which were canvassed before it, and after referring to the findings of the lower authorities, clearly held that they were correctly reached and therefore, it cannot be said that the Tribunal did not apply its mind to this aspect of the matter. The impugned order of the Tribunal has been made in lawful exercise of its jurisdiction and on the basis of the material on record warranting no interference by this Court. The petition is therefore, rejected. Rule is discharged with no order as to costs.

*/Mohandas